

STATE OF SOUTH CAROLINA

(Caption of Case)

Genesis Telecommunications, LLC,
Complainant/Petitioner v. United
Telephone of the Carolinas d/b/a
Embarq, Defendant/Respondent

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET/NDI

NUMBER: 2009 - 311 - C

(Please type or print)

Submitted by: Susan Masterton

SC Bar Number: 0

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Tallahassee FL 32301

Other: _____

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)

NATURE OF ACTION (Check all that apply)

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input checked="" type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | _____ |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Susan S. Masterton
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January 5, 2010

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: Docket No. 2009-311-C
Response in Opposition to Genesis's Request for Extension of Time

Dear Mr. Terreni:

United Telephone Company of the Carolinas d/b/a CenturyLink, formerly d/b/a Embarq ("CenturyLink") files this letter in opposition to the request for an extension of time to file direct testimony filed by Genesis Telecommunications, LLC ("Genesis") on December 30, 2009. Genesis's request is untimely in that it was filed after the due date for the testimony and it fails to state a "good cause" basis for the request as required by S.C. Regs. 103-831. In addition, neither CenturyLink nor the Office of Regulatory Staff appears to have been served with a copy of the filing, as required by S.C. Regs. 103-830. As a result of Genesis's failure to follow the rules that govern the Commission's proceedings, the Commission should deny the request for an extension of time and should dismiss Genesis's Complaint.

Genesis has requested a delay of 13 days for filing its testimony (originally due on December 29, 2009) without providing any explanation for why the delay is necessary. S.C. Regs. 103-831 authorizes the Commission to grant a request for an extension of time for "good cause shown," however; Genesis has failed to provide any information that might serve as a basis for a finding of good cause by the Commission. Given that Genesis filed its Complaint on July 27, 2009 and that the Pre-file Testimony Letter was issued on August 10, 2009, allowing Genesis approximately 5 months to prepare its case, CenturyLink believes that an extension of the date for filing testimony should be granted only under extraordinary circumstances, which Genesis has not demonstrated or even alleged.

CenturyLink strongly opposes any changes in the current procedural schedule that would postpone the February 4, 2010 hearing. As detailed in CenturyLink's Answer and Counterclaim to Genesis's Complaint, Genesis has paid and continues to pay CenturyLink only a small portion of CenturyLink's bills for DS1 service that are the subject of the dispute set forth in Genesis's Complaint and in CenturyLink's

Counterclaim. The unpaid amounts continue to grow while the complaint is pending.¹ In light of the lengthy time period that has passed since the Complaint and Counterclaim were filed, CenturyLink believes that there is no valid reason for delaying the February 4th hearing. Genesis's untimely request to delay filing its testimony potentially puts the remaining testimony filing dates in jeopardy and prejudices CenturyLink's right to a prompt resolution of the disputes.

S.C. Regs. 103-801 specifically states that the rules and regulations apply to any person participating in a proceeding before the Public Service Commission. Through its conduct in this proceeding, Genesis has given short shrift to these regulations by failing to timely file testimony, subsequently filing an untimely and unsupported motion for extension of time, and by neglecting to serve the other parties with its request. In addition, to date Genesis has failed to respond in any manner to CenturyLink's discovery served on Genesis electronically and by U.S. Mail on December 9, 2009, in accordance with S.C. Regs. 103-833.² Finally, Genesis does not appear to be represented by counsel in this matter as required by S.C. Regs. 103-805. These failures prejudice CenturyLink because they jeopardize its ability to fully prepare its testimony scheduled to be filed on January 12, 2010 and potentially will delay the resolution of the parties' disputes, creating an ever-growing financial exposure for CenturyLink.

Genesis's dilatory pursuit of its complaint amounts to a failure to prosecute that mandates dismissal of Genesis's complaint. Granting Genesis's request for extension would only serve to reward Genesis for its failure to comply with even the most rudimentary rules of procedure set forth in the Commission's rules. Dismissal is the only equitable disposition of this request and of Genesis's failure file the testimony as required. Should the Commission decline to dismiss the Complaint, Genesis's untimely and unsupported request for an extension should be denied and Genesis should be deemed to have declined to avail itself of the opportunity to file direct testimony.

In any event, CenturyLink's counterclaim remains to be resolved and CenturyLink is entitled to a prompt and fair hearing of its claim. Genesis still has the opportunity to file rebuttal testimony in response to CenturyLink's testimony (currently CenturyLink's testimony is scheduled to be filed January 12th and Genesis's rebuttal testimony is scheduled for January 19th).

¹ As of January 1, 2010 the amount that Genesis has failed to pay CenturyLink for the DS1 services provided is \$131,131.08.

² CenturyLink intends to file a separate Motion to Compel regarding the discovery requests.

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To the extent the Commission grants Genesis's untimely request for an extension, despite Genesis's failure to establish good cause for the request, CenturyLink respectfully requests that the due date for its testimony currently due on January 12th be extended to January 15th. However, CenturyLink strongly opposes any further extensions of the procedural schedule which would jeopardize the February 4th hearing date.

CenturyLink asks that this response be considered when the Commission considers Genesis's request for an extension of time. If you have any questions, or need any additional information, please let me know.

Sincerely,



Susan S. Masterton, Esq.

and

Scott Elliott, Esq., Elliott and Elliott, P.A.

Counsel for CenturyLink

cc: John Lawrence, Genesis Telecommunications, LLC (Electronic and U.S. Mail)
Nanette Edwards, Esq. ORS (Electronic and U.S. Mail)
Jocelyn Boyd, Esq. South Carolina PSC (Electronic Mail only)

CERTIFICATE OF SERVICE

The undersigned employee of CenturyLink does hereby certify that she has served below listed parties with a copy of the document(s) indicated below via electronic mail and by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Genesis Telecommunications, LLC,
Complainant/Petitioner v. United
Telephone of the Carolinas d/b/a
CenturyLink, Defendant/Respondent

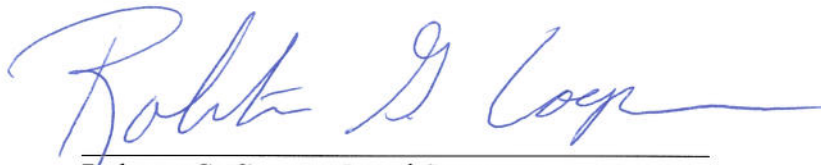
DOCKET NO.: 2009-311-C

PARTIES SERVED: Nanette S. Edwards
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
nsedwar@regstaff.sc.gov

John Lawrence
Genesis Telecommunications, LLC
1117 Reynolds Avenue
Greenwood, SC 29649
john@gogenesis.com

DOCUMENT: United Telephone Company of The Carolinas, LLC d/b/a
CenturyLink's Response in Opposition to Genesis's Request for
Extension of Time

January 5, 2010



Roberta G. Cooper, Legal Secretary